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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

## **CLASS ACTION COMPLAINT**

Now comes Plaintiff, Sara Rosas (“Plaintiff”), on behalf of herself and all others similarly situated, through Counsel, and pursuant to 740 ILCS § 14/15, and Fed. R. Civ. P. 23, against Defendant Jumio, Inc. (“Jumio” or “Defendant”), its subsidiaries and affiliates, to redress and curtail Defendant’s unlawful collections, obtainments, use, storage, and disclosure of Plaintiff’s sensitive

1 and proprietary biometric identifiers and/or biometric information (collectively referred to herein as  
 2 “biometric data” and/or “biometrics”). Plaintiff alleges as follows upon personal knowledge as to  
 3 herself, her own acts and experiences and, as to all other matters, upon information and belief  
 4 including investigation conducted by her attorneys.

5 **NATURE OF THE ACTION**

6       1. Defendant Jumio, Inc. is a Delaware corporation which operates as an information  
 7 “processor” for Instacart. A “processor” is an entity that processes personal information on behalf  
 8 of a controller, based upon the controller’s instructions. In this instance, Jumio is an entity that  
 9 processes personal information on behalf of Instacart, based upon Instacart’s instructions.

10      2. Instacart is an online, “app-based” food delivery platform.

11      3. Plaintiff was employed by Instacart as a “Shopper” within the five years immediately  
 12 preceding the filing of this matter.

13      4. To be a Shopper for Instacart, Plaintiff was required to upload a picture of her face  
 14 taken on her cell phone to be her profile image to serve as her “avatar” as well as a picture of her  
 15 government issued identification.

16      5. Instacart then requires Plaintiff and all its Shoppers to take verification photos on  
 17 their cell phones at regular intervals when they are working through the Instacart app.

18      6. Instacart utilizes the services of Jumio, who then performs a facial geometry  
 19 analysis of Plaintiff’s and its Shoppers’ verification photos, avatars, and government issued  
 20 identification to verify the identity of Plaintiff and its Shoppers.

21      7. Jumio, acting as a processor for Instacart, collects, stores, possesses, otherwise  
 22 obtains, uses, and disseminates its users’ biometric data to, amongst other things, further enhance  
 23 Instacart and its online platform.

1       8. Facial geometry scans are unique, permanent biometric identifiers associated with  
2 each user that cannot be changed or replaced if stolen or compromised. Jumio's unlawful collection,  
3 obtainment, storage, and use of its users' biometric data exposes them to serious and irreversible  
4 privacy risks. For example, if Jumio's database containing facial geometry scans or other sensitive,  
5 proprietary biometric data is hacked, breached, or otherwise exposed, Jumio users have no means  
6 by which to prevent identity theft, unauthorized tracking, or other unlawful or improper use of this  
7 highly personal and private information.

8       9. The Illinois Legislature enacted BIPA to protect residents' privacy interests in their  
9 biometric data. *See Heard v. Becton, Dickinson & Co.*, 440 F. Supp. 3d 960, 963 (N.D. Ill. 2020),  
10 citing *Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, 432 Ill. Dec. 654, 129 N.E.3d 1197,  
11 1199 (2019).

12      10. Courts analogize an individual's privacy interest in their unique biometric data to  
13 their interest in protecting their private domain from invasion, such as from trespass. *See Bryant v.*  
14 *Compass Group USA, Inc.*, 958 F.3d 617, 624 (7th Cir. 2020), as amended on denial of reh'  
15 g and reh'  
16 g *en banc*, (June 30, 2020) and opinion amended on denial of reh'  
17 g *en banc*, 2020 U.S. App.  
18 LEXIS 20468, 2020 WL 6534581 (7th Cir. 2020).

19      11. In recognition of these concerns over the security of individuals' biometrics –  
20 particularly in the City of Chicago, which has been selected by major national corporations as a  
21 “pilot testing site[] for new applications of biometric-facilitated financial transactions, including  
22 finger-scan technologies at grocery stores, gas stations, and school cafeterias” (740 ILCS 14/5(b))  
23 – the Illinois Legislature enacted the BIPA, which provides, *inter alia*, that a private entity like  
24 Jumio may not obtain and/or possess an individual's biometrics unless it: (1) informs that person in  
25 writing that biometric identifiers or information will be collected or stored; (2) informs that person  
26 writing that biometric identifiers or information will be stored; and (3) informs that person in writing  
27 that biometric identifiers or information will be destroyed.

in writing of the specific purpose and length of term for which such biometric identifiers or biometric information is being collected, stored and used; (3) receives a written release from the person for the collection of his or her biometric identifiers or information; and (4) publishes publicly-available written retention schedules and guidelines for permanently destroying biometric identifiers and biometric information. 740 ILCS 14/15(a)-(b).

12. The Illinois Legislature has found that “[b]iometrics are unlike other unique identifiers that are used to access finances or other sensitive information.” 740 ILCS 14/5(c). “For example, social security numbers, when compromised, can be changed. Biometrics, however, are biologically unique to the individual; therefore, once compromised, the individual has no recourse, is at heightened risk for identity theft, and is likely to withdraw from biometric-facilitated transactions.” *Id.*

13. Specifically, upon information and belief, Jumio has created, collected, and stored thousands of “face templates” – highly detailed geometric maps of the face from countless Illinois residents whose selfies and state-issued ID’s were collected by Jumio. Each face template that Jumio extracts is unique to a particular individual in the same way that a fingerprint or voiceprint uniquely identifies a particular individual.

14. Jumio is a “private entity” as that term is broadly defined by BIPA and Jumio is subject to all requirements of BIPA. *See* 740 ILCS § 14/10.

## **JURISDICTION AND VENUE**

15. This is a Class Action Complaint for violations of the Illinois Biometric Information Privacy Act (740 ILCS 14/1, *et seq.*) brought pursuant to Fed. R. Civ. P. 23, seeking statutory and actual damages.

16. Venue is proper in this Court because a substantial amount of the acts and omissions

giving rise to this Action occurred within this judicial district.

17. This Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1332 because Plaintiff and the proposed class members are all residents of Illinois, Jumio is domiciled within this judicial district, and the amount in controversy exceeds \$75,000.

18. This Court has jurisdiction over this dispute pursuant to the Class Action Fairness Act (“CAFA”) because the prospective class includes over 100 people and the amount in controversy exceeds \$5,000,000.

19. At all relevant times, Plaintiff and the proposed Class are residents of the state of Illinois and the violations of BIPA as detailed herein occurred while Plaintiff and the proposed Class were located in Illinois.

20. At all relevant times, Jumio is incorporated under the laws and jurisdiction of Delaware, and Jumio's principal place of business is located at Sunnyvale, California.

## **DIVISIONAL ASSIGNMENT**

21. The San Jose is the appropriate division for this case, pursuant to Civil L.R. 3-2(c), because a substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in the County of Santa Clara and Jumio is headquartered in the City of Sunnyvale, California.

## **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

22. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

23. Plaintiff was employed by Instacart as a “Shopper” within the five years immediately preceding the filing of this matter.

24. To be a Shopper for Instacart, Plaintiff was required to upload a picture of her

1 face taken on her cell phone to be her profile image to serve as her “avatar” as well as a picture of  
2 her government issued identification.

3       25.      Instacart utilizes the services of Jumio, who then performs a facial geometry  
4 analysis of Plaintiff’s and its Shoppers’ verification photos, avatars, and government issued  
5 identification to verify the identity of Plaintiff and its Shoppers.

6       26.      In other words, Jumio, as a processor for Instacart, collected and retained  
7 biometric information for the purpose of verifying Plaintiff’s identity prior to opening an Instacart  
8 Shopper account in Plaintiff’s name.

9       27.      Jumio, as a processor for Instacart, again collected and retained biometric  
10 information for the purpose of verifying Plaintiff’s identity at regular intervals while Plaintiff  
11 worked at Instacart as a Shopper.

12       28.      Ostensibly, the purpose of Instacart’s collection of Plaintiff’s facial geometry was  
13 to verify Plaintiff’s identity prior to Plaintiff’s logging on to the app to work as a Shopper for  
14 Instacart at any given time.

15       29.      As such, Plaintiff’s verification photos should have been permanently destroyed by  
16 the processor Jumio immediately following each verification of Plaintiff’s identity.

17       30.      However, Jumio failed to permanently destroy Plaintiff’s facial geometry as required  
18 by law.

19       31.      As such, Jumio’s retention of Plaintiff’s biometric information was unlawful and in  
20 violation of 740 ILCS § 14/15(a).

21       32.      Neither Instacart nor Jumio informed Plaintiff in writing that Jumio was collecting  
22 or storing her biometric information.

23       33.      Instead, Instacart simply instructed Plaintiff to upload her state issued identification

1 form, avatar photograph, and periodic verification photos as part of the onboarding and day-to-day  
 2 job duties while working as Shopper for Instacart.

3       34. In fact, neither Instacart nor Jumio made any mention of biometric information,  
 4 collection of biometric information, or storage of biometric information.

5       35. Moreover, neither Instacart nor Jumio informed Plaintiff in writing of the specific  
 6 purpose and length of term for which her biometric information was being collected, stored, and  
 7 used.

8       36. Jumio collected, stored, and used Plaintiff's biometric information without ever  
 9 receiving a written release executed by Plaintiff which would provide informed consent to or  
 10 authorize Jumio to do same.

12       37. At all relevant times, Jumio had no written policy, made available to the public,  
 13 establishing a retention schedule and guidelines for permanently destroying biometric information  
 14 when the initial purpose for collecting or obtaining such biometric information has been satisfied  
 15 or within 3 years of the individual's last interaction with Jumio, whichever occurred first.

17       38. Additionally, Jumio disclosed, redisclosed, or otherwise disseminated Plaintiff's  
 18 biometric information: (1) without Plaintiff's consent; (2) without Plaintiff's authorization to  
 19 complete a financial transaction requested or authorized by Plaintiff; (3) without being required by  
 20 State or federal law or municipal ordinance; or (4) without being required pursuant to a valid warrant  
 21 or subpoena issued by a court of competent jurisdiction.

23       39. Upon information and belief, Jumio is part of numerous third parties, all of whom  
 24 have had Plaintiff's biometric information disclosed, redisclosed or otherwise disseminated to them  
 25 via their role as a processor for Instacart.

26       40. Jumio's collection and retention of biometric information as described herein is not

1 unique to Plaintiff and is instead part of Jumio's policies and procedures which Jumio applies to all  
2 its Shoppers, including the Class Members.

3 **RULE 23 CLASS DEFINITION AND ALLEGATIONS**

4 41. Plaintiff realleges and incorporates by reference all allegations in all preceding  
5 paragraphs.

6 42. Plaintiff brings Claims for Relief in violation of BIPA as a class action under Rule  
7 23(a), (b)(2) and (b)(3). Plaintiff brings these claims on behalf of herself and all members of the  
8 following Rule 23 Class:

9 **All Illinois residents who had their biometric information collected by Jumio  
10 while using the platform Instacart at any point in the five (5) years preceding  
11 the filing of this Complaint (the "Class Members").**

12 43. In the alternative, and for the convenience of this Court and the parties, Plaintiff may  
13 seek to certify other subclasses at the time the motion for class certification is filed.

14 44. **Numerosity (Rule 23(a)(1)).** The Class Members are so numerous that joinder of all  
15 members is impracticable. Plaintiff is informed and believes that there are more than 1,000 people  
16 who satisfy the definition of the Class.

17 45. **Existence of Common Questions of Law and Fact (Rule 23(a)(2)).** Common  
18 questions of law and fact exist as to Plaintiff and the Class Members including, but not limited to,  
19 the following:

20 a. Whether Jumio possessed Plaintiff's and the Class Members' biometric identifiers  
21 or biometric information without first developing a written policy, made available to the public,  
22 establishing a retention schedule and guidelines for permanently destroying biometric identifiers  
23 and biometric information when the initial purpose for collecting or obtaining such identifiers or  
24 information has been satisfied or within 3 years of the individual's last interaction with Jumio,

1 whichever occurs first.

2       b.      Whether Jumio collected, captured, purchased, received through trade, or otherwise  
3 obtained Plaintiff's and the Class Members' biometric identifiers or biometric information, without  
4 first: (1) informing Plaintiff and the Class Members in writing that a biometric identifier or biometric  
5 information is being collected or stored; (2) informing Plaintiff and the Class Members in writing  
6 of the specific purpose and length of term for which their biometric identifiers or biometric  
7 information was being collected, stored, and used; and (3) receiving a written release executed by  
8 Plaintiff and the Class Members

9  
10       c.     Whether Jumio disclosed, redisclosed, or otherwise disseminated Plaintiff's and the  
11 Class Members' biometric identifiers or biometric information: (1) without Plaintiff's and the Class  
12 Members' consent; (2) without Plaintiff's and the Class Members' authorization to complete a  
13 financial transaction requested or authorized by Plaintiff and the Class Members; (3) without being  
14 required by State or federal law or municipal ordinance; or (4) without being required pursuant to a  
15 valid warrant or subpoena issued by a court of competent jurisdiction.

16  
17       d.     The damages sustained and the proper monetary amounts recoverable by Plaintiff  
18 and the Class Members.

19       46.   **Typicality (Rule 23(a)(3)).** Plaintiff's claims are typical of the Class Members'  
20 claims. Plaintiff, like the Class Members, had their biometric identifiers and biometric information  
21 collected, retained or otherwise possessed by Jumio without its adherence to the requirements of  
22 BIPA as detailed herein.

23  
24       47.   **Adequacy (Rule 23(a)(4)).** Plaintiff will fairly and adequately represent and protect  
25 the interests of the Class Members. Plaintiff has retained counsel competent and experienced in  
26 complex class actions.

48. **Injunctive and Declaratory Relief (Rule 23(b)(2)).** Class certification of the Rule 23 claims is appropriate under Rule 23(b)(2) because Jumio acted or refused to act on grounds generally applicable to the Class Members, making appropriate declaratory relief with respect to the Class Members as a whole.

49. **Predominance and Superiority of Class Action (Rule 23(b)(3)).** Class certification of the Rule 23 claims is also appropriate under Rule 23(b)(3) because questions of law and fact common to the Class Members predominate over questions affecting only individual members of the classes, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Jumio's common and uniform policies and practices illegally deprived Plaintiff and the Class Members of the privacy protections which BIPA seeks to ensure; thus, making the question of liability and damages much more manageable and efficient to resolve in a class action, compared to hundreds of individual trials. The damages suffered by individual Class Members are small compared to the expense and burden of individual prosecution. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Jumio's practices.

50. Plaintiff intends to send notice to all Class Members to the extent required by Fed. R. Civ. P. 23.

**COUNT ONE: VIOLATION OF 740 ILCS § 14/15(a)**

51. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

52. A private entity in possession of biometric identifiers or biometric information must develop a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the

1 initial purpose for collecting or obtaining such identifiers or information has been satisfied or within  
 2 3 years of the individual's last interaction with the private entity, whichever occurs first. Absent a  
 3 valid warrant or subpoena issued by a court of competent jurisdiction, a private entity in possession  
 4 of biometric identifiers or biometric information must comply with its established retention schedule  
 5 and destruction guidelines. 740 ILCS § 14/15(a).

6       53.     Jumio created and collected biometric templates of the Plaintiff's and the Class  
 7 Members' faces which qualifies as biometric information as defined by BIPA.

8       54.     At all relevant times, Jumio had no written policy, made available to the public,  
 9 establishing a retention schedule and guidelines for permanently destroying biometric information  
 10 when the initial purpose for collecting or obtaining such biometric information has been satisfied or  
 11 within 3 years of the individual's last interaction with Jumio, whichever occurs first.

12       55.     Ostensibly, the purpose of Jumio's collection of Plaintiff's and the Class Members'  
 13 facial geometry was to verify Plaintiff's and the Class Members' identities prior to opening an  
 14 Instacart Shopper account in their names and the purpose of Jumio's collection Plaintiff's and the  
 15 Class Members' biometric information was to verify Plaintiff's and the Class Members' identities  
 16 when they logged in to Instacart.

17       56.     As such, Plaintiff's and the Class Members' facial geometry should have been  
 18 permanently destroyed by Jumio following the opening of their Instacart Shopper accounts.

19       57.     However, Jumio failed to permanently destroy Plaintiff's and the Class Members'  
 20 facial geometries following the opening of their Instacart Shopper accounts and instead retained  
 21 Plaintiff's and the Class Members' biometric information.

22       58.     Moreover, Plaintiff's and the Class Members' biometric information should have  
 23 been permanently destroyed by Jumio after Plaintiff and the Class Members logged out or ceased  
 24

using their Instacart Shopper account.

59. However, Jumio failed to permanently destroy Plaintiff's and the Class Members' biometric information after they logged out or ceased using their Instacart Shopper accounts.

60. As such, Jumio's retention of Plaintiff's and the Class Members' biometric information was unlawful and in violation of 740 ILCS § 14/15(a).

**COUNT TWO: VIOLATION OF 740 ILCS § 14/15(b)**

61. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

62. No private entity may collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifier or biometric information, unless it first:

(1) informs the subject or the subject's legally authorized representative in writing that a biometric identifier or biometric information is being collected or stored;

(2) informs the subject or the subject's legally authorized representative in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and

(3) receives a written release executed by the subject of the biometric identifier or biometric information or the subject's legally authorized representative. 740 ILCS § 14/15(b).

63. Jumio did not inform Plaintiff and the Class Members in writing that Jumio was collecting or storing their biometric information.

64. Instead, Plaintiff and the Class Members were simply instructed to upload their state issued identification forms and “selfies” as part of the overall account opening process and this information was then processed by Jumio by creating biometric facial templates.

65. Moreover, Jumio did not inform Plaintiff and the Class Members in writing of the specific purpose and length of term for which their biometric information was being collected, stored, and used.

1           67. Jumio collected, stored, and used Plaintiff's and the Class Members' biometric  
 2 information without ever receiving a written release executed by Plaintiff and the Class Members  
 3 which would consent to or authorize Jumio to do the same.

4           68. As such, Jumio's collection of Plaintiff's and the Class Members' biometric  
 5 information was unlawful and in violation of 740 ILCS § 14/15(b).

6           **COUNT THREE: VIOLATION OF 740 ILCS § 14/15(d)**

7           69. Plaintiff realleges and incorporates by reference all allegations in all preceding  
 8 paragraphs.

9           70. No private entity in possession of a biometric identifier or biometric information may  
 10 disclose, redisclose, or otherwise disseminate a person's or a customer's biometric identifier or  
 11 biometric information unless:

12           (1) the subject of the biometric identifier or biometric information or the subject's  
 13 legally authorized representative consents to the disclosure or redisclosure;

14           (2) the disclosure or redisclosure completes a financial transaction requested or  
 15 authorized by the subject of the biometric identifier or the biometric information or  
 16 the subject's legally authorized representative;

17           (3) the disclosure or redisclosure is required by State or federal law or municipal  
 18 ordinance; or

19           (4) the disclosure is required pursuant to a valid warrant or subpoena issued by a  
 20 court of competent jurisdiction. 740 ILCS § 14/15(d).

21           71. Upon information and belief, Jumio is part of a network of numerous third parties,  
 22 all of which have had Plaintiff's biometric information disclosed, redisclosed or otherwise  
 23 disseminated to them via their role as processors for Instacart.

24           72. Jumio's disclosures, redisclosures, or otherwise disseminating of Plaintiff's and the  
 25 Class Members' biometric information was unlawful and in violation of 740 ILCS § 14/15(d).

26           **WHEREFORE**, individually, and on behalf of the Class Members, Plaintiff prays for: (1)

certification of this case as a class action pursuant to Fed. R. Civ. P. 23 and appointing the undersigned counsel as class counsel; (2) a declaration that Defendant has violated BIPA, 740 ILCS 14/1 *et seq.*; (3) statutory damages of \$5,000.00 for the intentional and reckless violation of BIPA pursuant to 740 ILCS 14/20(2), or alternatively, statutory damages of \$1,000.00 per violation pursuant to 740 ILCS 14/20(1) in the event the court finds that Defendant's violations of BIPA were not willful; (4) reasonable attorneys' fees and costs and other litigation expense pursuant to 740 ILCS 14/20(3); (5) actual damages; and (6) for any other relief deemed appropriate under the circumstances.

**DEMAND FOR JURY TRIAL**

Plaintiff and the Class Members hereby demand a jury trial on all causes of action and claims with respect to which they each have a state and/or federal constitutional right to a jury trial.

Dated: March 5, 2024 Respectfully submitted,

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